

motion 2

Parliament of Sint Maarten

Parliamentary year 2017–2018

(A translation of this motion in the Dutch language is attached hereto)

Interior and Kingdom Relations (BAK)

MOTION BY MP P. GEERLINGS C.S. REGARDING AN INSTRUCTION TO THE GOVERNMENT, C.Q. TO THE MINISTER OF GENERAL AFFAIRS, TO INSTRUCT, WITHOUT ANY DELAY, THE MINISTER PLENIPOTENTIARY TO INTRODUCE THE DECREE OF DISSOLUTION OF PARLIAMENT DATED NOVEMBER 3, 2017 (LB-17/0575) TO THE AGENDA OF THE NEXT MEETING OF THE KINGDOM COUNCIL OF MINISTERS AND TO PROMOTE ITS NULLIFICATION ON THE BASIS OF SECTION 22 OF THE REGULATIONS FOR THE GOVERNOR OF SINT MAARTEN (THE SO-CALLED "SPONTANEOUS NULLIFICATION")

Proposed: November ^{10th} 9th, 2017

Parliament,

having heard the consultations,

established:

that on September 6, 2017 Sint Maarten was struck by hurricane Irma;

that the Dutch government by its letter dated October 13th, 2017 attached conditions to rendering assistance with the reconstruction;

that on October 25th, 2017 Parliament adopted a motion that was introduced on October 4th, 2017, regarding the improvement of the cooperation with the Kingdom partners, seeking help with the reconstruction and having meetings on a regular basisⁱ;

that government had not adhered to the aforementioned motion nor had it informed Parliament about an advice by the Council of Advice regarding the adjusted draft Ordinance Integrity Chamber;

that on November 2nd, 2017 three motions by Parliament have been put to a vote, which motions – in deviation from the USP party line – have been supported by MP C. Brownbill and also by all members of the government supporting DP faction, being Geerlings and Wescot-Williams, that resulted in the motions being accepted;

that the purpose of the first motion was to amend the draft Ordinance Integrity Chamber in accordance with the conditions of the Dutch government and the purpose also was to instruct the Minister of Justice to consult with his Dutch counterpartⁱⁱ, regarding the mutual cooperation regulation regarding the Border Control, which motion was supported and carried by a majority of eight parliamentarians without any vote against;

that the second motion regarded the acceptance of the conditions of the Dutch government as per letter of October 31st, 2017,ⁱⁱⁱ which motion

was supported and carried by a majority of eight parliamentarians without any vote against;

that the third motion concerned a motion of no confidence against the majority of the members of the government of Sint Maarten,^{iv} which motion was supported by a majority of eight parliamentarians with six votes against;

that the majority of eight parliamentarians announced their desire and intend to form a new government;

that the government subsequently tendered its resignation with the Governor of Sint Maarten;

that the government issued a draft Decree holding the dissolution of parliament in accordance with article 59 of the State Regulation (hereinafter: 'Constitution') and also ordering new elections, which draft was signed on November 3rd, 2017^v by the Governor without having had the necessary consultations or having obtained advice;

that the Decree further explains that the dissolution of Parliament is justified because the committee for electoral reform has demonstrated that "ship jumping" by parliamentarians should be discouraged and that again a parliamentarian disobeyed the party line by – apparently – voting without being bound by a mandate or instructions, which had detrimental effect on the administration and would complicate a sustainable majority based government;

that previously in 2015 Parliament has been dissolved also, and then various advices by legal scholars and three judges were requested, given and publicized regarding the question if, and if so, under which circumstances, dissolving Parliament by government may be justified;

that regarding the right to dissolve the legal scholar Prof. dr. A. van Rijn has stated that it is always allowed as long as there is a reason of such convincing nature that government is willing to be politically accountable for and also held that a dissolution (in the situation that existed in 2015) in case of distancing from government without motivation was naturally allowed^{vi} and afterwards Prof. C.A.J.M. Kortmann LL.M.^{vii} and Prof. dr. J.Th.J. van den Berg^{viii} concurred with this position;

that Prof E.M.H. Hirsch Ballin LL.M. to the contrary held the opinion that dissolving parliament required the support of a majority of the parliamentarians^{ix};

that the three judges advised that the dissolution of Parliament is allowed,^x but noted that dissolution should remain exceptional, for a frequent application thereof erodes the authority of parliament;

that, in deviation from the situation in 2015, Parliament by means of the accepted motions of November 2, 2017, had motivated its distancing from government;

that the chairman of the Central Voting Bureau in its letter of November 6, 2017 expressed practical and legal objections in having the Parliamentary elections taking place on the scheduled date;

that the practical objections inter alia involve the lack of physical and logistical equipment;

that the legal objections concern the violation of sections of the Constitution regarding the right to postulate oneself and the right to vote and also the violation of terms mentioned in the Electoral Ordinance;

that the chairman of the Electoral Board^{xi} on November 7th, 2017 made public that no consultations took place, that no office is available and that there is insufficient time for new parties to register and that it must be established that the decree violates the Constitution regarding the right to postulate oneself and the right to vote;

that on the basis of all the aforementioned the Governor nevertheless considered no reason to initiate the procedure mentioned in article 22 of the Regulations for the Governor in which holds the procedure that a

decree will not be established if it is inconsistent with the Kingdom Charter, an International Regulation, a General Kingdom Act/Decree or with interests whose promotion or protection is a Kingdom affair;

considering:

that the government on the basis of article 43.1 of the Kingdom Charter shall promote the realization of fundamental human rights and freedoms, legal certainty and good governance;

that the aforementioned plights and obligations are inserted and elaborated upon in Chapter 2 of the Constitution of Sint Maarten;

that the safeguarding of the aforementioned rights and freedoms, legal certainty and good governance is a Kingdom affair.

concluding:

that by dissolving parliament and establishing the election date on January 8th, 2017, rules are violated of both the Constitution and the Electoral Ordinance and thus in concreto the right to postulate as well the right to vote are infringed upon;

that as a result of dissolving parliament the reconstruction is delayed and that the safeguarding of fundamental human rights and freedoms, legal certainty and good governance is increasingly coming under pressure;

that a majority in parliament has substantiated its distancing from government, because it inter alia maintained a confrontational and non-constructive approach towards the countries of the Dutch Kingdom, thereby endangering, or at least delaying, the reconstruction of Sint Maarten;

that the Governor did not, or at least not knowable, examined if the government – as opposed to the substantiated motion of no confidence – had a convincing reasoning (of substantial importance) to decide to dissolve parliament;

that such reasoning cannot be the claim that MP Brownbill shipjumped since he argued that he had not;

that such reasoning cannot be that he voted independently since the Constitution explicitly states that members of parliament shall not be bound by a mandate or instructions when casting their votes;

that because of all the foregoing the decree to dissolve parliament is in conflict with provisions of the Constitution, the Kingdom Charter and with interests whose promotion or protection is a Kingdom affair;

establishing also:

that article 22 of the Regulations for the Governor, in conjunction with article 50 of the Kingdom Charter, arranges the spontaneous annulment of legislative and administrative measures in Sint Maarten which are inconsistent with the Charter, an international instrument, a Kingdom Act/Decree or an order in council for the Kingdom, or with interests whose promotion or protection is a Kingdom affair;

that the aforementioned instrument of spontaneous annulment since the Constitution of 1814 (article 91) forms part of the legal order of the Kingdom and may currently be found in article 134.4 of the Dutch Constitution and may also be found in the Municipality Act and Province Act;

that the rules (for spontaneous annulment) are further elaborated upon in the Act Revitalizing General Supervision, the 'policy framework spontaneous annulment' and that for the BES Islands the 'framework suspension and annulment' has been established;

that those rules should be applied in a coherent, equal and similar ('concordant') way in which annulment only takes place as last resort and also must be proportionate;

that annulment of the decree is indicated (and suspension during the annulment procedure) since fundamental human rights and freedoms, legal certainty and good governance will unacceptably be infringed upon as a result of dissolving parliament and ordering elections in a too short period of time and thus violate the aforementioned rights and freedoms, or at least with interests whose promotion or protection is a Kingdom affair;

that given the current circumstances annulment is also proportionate;

considering also:

that on the basis of article 7 of the Kingdom Charter the Council of Ministers of the Kingdom shall be composed of the Ministers appointed by the King and the Minister Plenipotentiary appointed by the Government of Sint Maarten;

that on the basis of article 8 of the Kingdom Charter the Minister Plenipotentiary shall act in the name of the Government of Sint Maarten, which shall appoint or remove him/her;

that on the basis of article 10 of the Kingdom Charter the Minister Plenipotentiary shall participate in the deliberations of the Kingdom Council of Ministers whenever Kingdom affairs are discussed which affect Sint Maarten;

that the Minister Plenipotentiary has the opportunity to request the Chairman of the Council of Ministers of the Kingdom to add topics to the agenda^{xii} of this Council;

that in Chapter 3 of the Constitution of Sint Maarten, especially article 43, the constitutional position of the Minister Plenipotentiary within the legal order of Sint Maarten is further established;

that the explanatory memorandum^{xiii} shows that the Minister Plenipotentiary is not responsible to parliament, but this responsibility for given instructions remain with a minister responsible for a certain policy as well the Minister of General Affairs;

that article 2.e of the Organisatiebesluit General Affairs (AB 2013, GT no. 10) underlines that the relationship with Kingdom partners is a main task of the Ministry of General Affairs;

that the department of the Interior and Kingdom Relations of the Ministry of General Affairs strives to promote good and balanced relations with the Kingdom;

that in article 6 of the Rules of Order of the Council of Ministers of Sint Maarten it is established that the council of ministers deliberates and decides about the preparation and handling of Kingdom Affairs;

that the institution of the administration of Sint Maarten via article 38 of the Constitution of Sint Maarten is implemented in the Ordinance Inrichting en Organisatie Landsoverheid "Lv. IOL" and that it must be established that the Minister Plenipotentiary is embedded in the structure of the Ministry of General Affairs^{xiv}.

Concluding also:

that the Council of Ministers, or at least the Minister of General Affairs, on the basis of administrative authority, are authorized to issue instructions to the Minister Plenipotentiary;

that the aforementioned authority also encompass to request the Chairman of the Council of Ministers of the Kingdom to add topics to the agenda;

that it is desired by a majority in the Parliament of Sint Maarten that the aforementioned Decree will be recommended for annulment by the Kingdom Council of Ministers and that such annulment will be advocated on the basis of the reasoning in this motion;

INSTRUCTS:

the Council of Minister of Sint Maarten, especially the Minister of General

Affairs to order and instruct the Minister Plenipotentiary to immediately and without delay request the Chairman of the Council of Ministers of the Kingdom to add the annulment of the Decree of November 3rd, 2017 to the agenda, and in case this topic is added to the agenda to propose the suspension and annulment of the Decree on basis of the reasoning in this motion;

and goes over to the order of the day.



MP Perry Geerlings

MP Sarah Wescot-Williams

MP Chanel Brownbill

MP Theodore Heyliger



MP Franklin Meyers

MP Tamara Leonard



MP Claret Connor

MP Sidharth Bijlani



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PARLIAMENT OF SINT MAARTEN
Friday, November 10, 2017, Public Meeting no. 08
Voting list

Unanimous

NO.	NAME	VOOR/FOR	TEGEN/AGAINST
1.	S.A. Wescot-Williams		
2.	Sidharth M Bylani		
3.	Chanel E Brownbill		
4.	Claret MM Connor		
5.	Perry FM Geerlings		
6.	Theodore E Heyliger		
7.	Ardwell MR Irion		
8.	Tamara E Leonard		
9.	Franklin A Meyers		
10.	George C Pantophlet		
11.	Frans G Richardson		
12.	drs. Rodolphe E Samuel		
13.			
14.			
15.			

ZHSA